

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 774 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE and
MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

MADANSINH PYARINH RAJPUT

Versus

STATE OF GUJRAT

Appearance:

MR PC KAVINA for Petitioner

MR. S.T.MEHTA, LD.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE S.D.DAVE and
MR.JUSTICE H.R.SHELAT

Date of decision: 01/07/96

ORAL JUDGEMENT

PER: DAVE,J :-

The Appellant Madansinh Rajput came to be convicted for the commission of the offence punishable under Section 8 and 17 of the N D P S Act,1985, by

learned Addl. Sessions Judge, Rajkot in S.C.No. 168 of 1991, vide the judgment dated June 30, 1992. He has been sentenced to the R.I. for a period of ten years and to a fine of Rs.1,00,000-00, in default to the S.I. for a period of two years. The said judgment of conviction and sentence has been called in question by the appellant by filing the present appeal.

Learned counsel Mr. Percy Kavina, who appears on behalf of the appellant urges by way of a solitary contention that, the evidence regarding the seal is not at all trustworthy and reliable and that, either of the two versions regarding the seal being in English language & script or being in Gujarati language & script can not be accepted because of the counter running evidence produced by the prosecution. As we propose to decide the present appeal on the above said solitary contention coming from learned counsel, we feel that, a detailed reference to the facts of the case would not be necessary. In our view, it would be sufficient to notice that on September 21, 1991 at about 8.00 p.m. the appellant accused was intercepted near Gitanagar Street No.3 at Rajkot by the police officers, who were accompanied by the panch witnesses. This appears to be on some intelligence received by the police officials that the appellant accused would be passing from near the said place with some drug or psychotropic substance. The search was made and ultimately opium weighing 1kg.580 grams of the value of Rs.4,500-00 came to be recovered from him. Necessary formalities were completed. The muddamal opium allegedly recovered from the appellant accused was packed in a packet and the slip bearing the signatures of the panch witnesses were obtained and affixed on the said packet. The seal which is a must was also affixed to show that it was the offence registered by Rajkot City 'C' Division police station and that, the muddamal opium should reach the Forensic Science Laboratory in the same condition without any tampering whatsoever. The Report came to be obtained by the prosecuting agency and ultimately the appellant accused came to be tried for the alleged commission of the said offence. The charge at exhibit-1 was framed, the appellant accused had pleaded not guilty to the said charge, but relying upon the prosecution evidence learned Addl. Sessions Judge has preferred to pronounce the judgment of conviction and sentence.

As indicated by us earlier, the solitary contention being placed by learned counsel for the appellant is that the evidence regarding the seal is not only not consistent but is running counter to each other

in various aspects and that, it can not be said that the very muddamal which was allegedly recovered from the appellant accused had reached the Forensic Science Laboratory, Junagadh in the very same condition. Learned counsel further urges that, because of this position when there was no guarantee that the very same muddamal had reached the said Laboratory, the prosecution could not have urged successfully that the muddamal allegedly came to be recovered from the appellant accused was opium or a drug or a substance falling within the purview of N D P S Act, 1985.

With a view to appreciate this contention which in our view, could not be successfully combated by learned Government Counsel Mr. S.T. Mehta, the reference requires to be made to the relevant evidence in this respect. Ayadanbhai Boricha, P.W-1, Exhibit-8, who was working as the panch no.1 at the time of seizure has stated in his evidence that, the muddamal was packed in a carton and later on it was sealed and slip bearing signatures of two panchas was affixed and upon the same the seal of Rajkot City 'C' Division Police Station was also affixed. He has also stated during the cross examination that the seal on the packet which were being shown to him while he was in the witness box were not legible. Any how, we are not on that aspect of the matter at present. The panchanama at Exhibit-10 would go to show that, as said by the panch witnesses the muddamal opium was packed and it was affixed with the slips bearing signatures of the panch witnesses and later on there was the affixation of the seal of 'C' Division Police Station, Rajkot. The panchanama also says unequivocally that the seal was in Gujarati language and script. L axmanbhai Mandanbhai, P.W No.2, Exhibit-11 has stated the very same thing, by saying that, the seal of Rajkot City 'C' Division Police Station was in Gujarati language and script. Any how, Tulsikumar Sharma, Senior Scientific Assistant Cum Assistant Chemical Analyser attached to the Junagadh Forensic Science Laboratory has stated in his evidence at Exhibit-13 that the said seal was in English language and script. Exhibit-14 the letter dated 23-9-1991 also would say that the seal was in English language and English script. Once again Exhibit-17 would go to show that the above said seal was in English language and English script. Rameshchandra Pravinbhai, P.W.No.7, the police personal working under 'C' Division Police Station at Rajkot has said in his evidence at Exhibit-24 that the packet which he had carried from Rajkot to Junagadh was bearing the seal of Rajkot City 'C' Division Police Station in English language and English script. One Bipinchandra Gordhandas

again a police personal, P.W. No.8, Exhibit-25 has stated that the seal was in Gujarati language and script. Dalpatsinh Rathod who was working as PSI at the relevant time and who had carried out the search in the seizure of the muddamal opium has said in his evidence at Exhibit-27 that, the seal of the police station was in Gujarati language and Gujarati script.

This evidence therefore would go to show that there is no consistency in the case of the prosecution regarding the language and the script of the seal. At the top of all, Exhibit-16 the Report sent by Forensic Science Laboratory at Junagadh shows a fascimile of the seal which is undoubtedly in English language and English script. Thus the say of the some of the police officials and PSI Shri. Rathod who had carried out the search and the seizure is entirely different compared to the other evidence on record, including the say of the Forensic Expert. Witness after witness comes out with a different version in this respect. Thus it is apparently clear that the case of the prosecution in this respect is not consistent. Not only this but the evidence appears to be self-contradictory in this respect. This would hardly satisfy us and would never ensure the prime aspect regarding the transit of the alleged muddamal in the very same condition in which it was seized. The whole process of having the seal by different police stations is meant for ensuring that whatever is being allegedly recovered from a probable accused reaches the Forensic Science Laboratory in the very same condition. The requirement envisaged by law in this respect is to ensure that each and every possibility of tampering with the muddamal allegedly recovered from the probable accused is eliminated. Unfortunately the evidence brought on record complicates the situation. From this evidence, nobody would be able to come to the conclusion that the safeguard had worked properly and that what was allegedly recovered from the appellant accused had reached the laboratory in the same condition. The spirit behind enacting the rule of having the seal appears to have been frustrated. The accused in such a case would be able to urge with vehemence and success that every possibility of tampering with the muddamal has not been ruled out.

Therefore the contention coming from learned counsel for the appellant in this respect requires to be accepted. Once this contention is accepted, it would be extremely difficult, rather impossible to come to the conclusion that, what was allegedly recovered from the appellant accused had reached the laboratory in the very same

condition and that, during the analysis it was found to be opium, a prohibited substance under N D P S Act 1985. The prosecution therefore fails on this count alone. The judgment of conviction & sentence recorded by the Court below can not be sustained. The appeal requires to be allowed. We therefore order accordingly. The present appeal is allowed. The judgment of conviction and sentence recorded by the Court below is hereby quashed and set aside. The appellant accused is hereby acquitted of the offence punishable under Section 8 and 17 of the N D P S Act 1985. The appellant accused is behind the bars and therefore he should be set at liberty forthwith, if not required in any other criminal case or proceedings. Fine if any paid should be refunded to the appellant. D.S. permitted.
